

SERVICE DATE – JULY 20, 2015

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 414 (Sub-No. 7X)

IOWA INTERSTATE RAILROAD, LTD.—ABANDONMENT  
EXEMPTION—IN POTTAWATTAMIE COUNTY, IOWA

Decided: July 17, 2015

Iowa Interstate Railroad, Ltd. (IAIS) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments, to abandon a line of railroad extending from milepost 467.77 near Hancock Junction, Iowa, to the end of the track at milepost 469.59 near Oakland, Iowa, a distance of approximately 1.82 miles in Pottawattamie County, Iowa. Notice of the exemption was served and published in the Federal Register on March 27, 2014 (79 Fed. Reg. 17,233). The exemption was scheduled to become effective on April 26, 2014.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) in this proceeding on April 1, 2014, requesting comments by April 16, 2014. No comments were timely received. In its Final EA, OEA recommended that the following consultation conditions be imposed: (1) IAIS shall consult with the Iowa Department of Natural Resources (IDNR) prior to initiating salvage operations to determine what, if any, approvals or permits may be needed to protect any rare species or significant natural communities, streams, and other flowing waterbodies, and provide best management practices, and, if approvals or permits are needed, to comply with IDNR's reasonable requirements; and (2) IAIS shall consult with the U.S. Army Corps of Engineers' (Corps) Rock Island District prior to initiating salvage activities for potential impacts to waters of the United States, including wetlands, and comply with the reasonable requirements of the Corps. Accordingly, the conditions were imposed in a decision served April 25, 2014.

In a Supplemental Final EA, OEA stated that the National Geodetic Survey (NGS) indicated that one geodetic station marker may be located in the area proposed for abandonment. OEA therefore recommended that a new environmental condition be imposed requiring IAIS to consult with NGS and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers. By decision served May 5, 2014, the consultation condition was imposed.<sup>1</sup>

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<sup>1</sup> The consultation conditions imposed in the April 25 and May 5 decisions remain in effect.

By petition filed January 23, 2015, IAIS sought a six-month extension, to September 27, 2015, of the period for filing a notice of consummation in this abandonment proceeding. By order dated February 11, 2015, the Board granted the petition.

On July 6, 2015, the Pottawattamie County Conservation Board and the Iowa Natural Heritage Foundation (proponent), filed a request for the issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29, to provide time to negotiate with IAIS for acquisition of the right-of-way for use as a recreational trail and for rail banking. Proponent submitted a statement of its willingness to assume financial responsibility for the right-of-way and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation of the right-of-way for rail service, as required by 49 C.F.R. § 1152.29. On July 8, 2015, IAIS agreed to negotiate with proponent for interim trail use.

Because the proponent's request complies with the requirements of 49 C.F.R. § 1152.29 and IAIS is willing to enter into interim trail use negotiations, a NITU will be issued. The parties may negotiate during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29 (d)(2) and (h). If no agreement is reached within 180 days, IAIS may fully abandon the line, subject to any outstanding conditions in this proceeding. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on March 27, 2014, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit proponent to negotiate with IAIS for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until January 16, 2016.
3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

4. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 3 above.

5. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by January 16, 2016 for the right-of-way, interim trail use may be implemented. If no agreement is reached, IAIS may fully abandon the line, subject to any outstanding conditions in this proceeding.

8. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.